

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Integrys Energy Services, Inc.	:	
	:	
Petition for Relief to Protect Integrys'	:	
Annual Report of Compliance with	:	10-0525
RPS and ACP Filing from disclosure	:	
for not less than two years in order to	:	
protect highly confidential and	:	
proprietary information.	:	

ORDER

By the Commission:

On August 30, 2010, Integrys Energy Services, Inc. ("Petitioner") filed with the Illinois Commerce Commission ("Commission") a verified petition requesting an order protecting from disclosure for not less than two years confidential and proprietary information contained in two filings required by Commission rules. Specifically, Section 455.120 of 83 Ill. Adm. Code 455, "Renewable Portfolio Standard and Clean Coal Standard for Alternative Retail Electric Suppliers and Utilities Operating Outside Their Service Areas," ("Part 455") requires alternative retail electric suppliers ("ARES") and electric utilities serving or seeking to serve retail customers outside their traditional service area (collectively "retail electric suppliers" ["RES"]) to report on their compliance with Section 16-115D of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq. This section of the Act requires RES to procure renewable energy resources. The report, to be entitled "Annual Report of Compliance with Renewable Portfolio Standard" ("RPS Report"), must be received by September 1 of each year and is to cover the 12-month period ending May 31 of the same year. Section 455.120 generally requires that the report include:

- (1) the total quantity of metered electricity supplied to Illinois retail customers,
- (2) the quantity of metered electricity supplied to Illinois retail customers pursuant to contracts executed or extended after March 15, 2009,
- (3) the quantity of renewable energy credits ("REC") (in megawatt-hours ["MWH"]) that were retired for purposes of meeting the requirements of the RPS for the compliance period, and
- (4) the alternative compliance payments that were made for purposes of meeting the requirements of the RPS for the compliance period.

In addition to the filing required by Section 455.120, Section 455.130 of Part 455 requires RES to make an alternative compliance payment filing ("ACP Filing") by September 1 of each year for the 12-month period ending May 31 of the same year. A RES is to make an ACP Filing if it does not fully comply with its obligation to procure renewable energy resources in a given reporting period. Petitioner is an ARES and as such must submit such a RPS Report and, if necessary, an ACP Filing.

The Commission received Petitioner's RPS Report and ACP Filing on August 31, 2010. Petitioner provided both properly redacted public versions and unredacted confidential versions of both filings. Petitioner has redacted from its RPS Report MWH amounts, its ACP amount, the quantity of RECs retired, and account numbers and MWH sold under contracts entered into or extended after March 15, 2009. From its ACP Filing Petitioner has redacted the ACP amount. Petitioner considers such information market sensitive and believes the public disclosure of such would be detrimental to it. Petitioner notes in its petition that Section 455.20 of Part 455 provides for confidential treatment of sensitive information.

In support of its request, Petitioner asserts that the retail electric service industry is highly competitive and that it is essential that public disclosure of the confidential information in its RPS Report and ACP Filing be avoided for at least two years because of the competitive harm that disclosure of such information would likely cause it. Petitioner points out that it sells services to customers in competition with many other ARES. Unlike a public utility, Petitioner explains that it does not have a defined service territory in which it enjoys "first in field" protection from competitors, and it is consequently subject to a lesser degree of regulation. Petitioner indicates that disclosure of commercial information is harmful to a company subject to competition because it gives competitors insight into information about its relative position in the marketplace. According to Petitioner, such information may inform and enhance competitors' marketing strategies by allowing them to assess more accurately their potential strengths and weaknesses in specific service territories. If publication of the quantity information, ACP amount, and customer account data were beneficial to it, Petitioner states that it would routinely publish the information. Instead, it, like its competitors, routinely seeks protection of the data.

Petitioner explains further that the RPS Report and ACP Filing include data that a competitor could try to use to derive a key piece of market information -- market share. ARES do not generally disclose information that can assist competitors in discerning their competitive position in the market. But for the potential disclosure if the Commission denies its request, Petitioner would not publicize its annual quantities delivered and sold by service territory. Petitioner cites and discusses Lion Raisins Inc. v. United States Department of Agriculture, 354 F. 3d 1072 (9th Cir. 2003), in support of its argument that market share information is recognized as being commercially sensitive.

Commission Staff did not participate in this docket. No petitions to intervene were received. Nor was a hearing held in this matter. The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Petitioner is an ARES, as defined in the Act;
- (2) the Commission has jurisdiction over Petitioner and the subject matter herein;

- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

- (4) Section 455.20(b) of Part 455 provides, in pertinent part:

If information contained in any report filed pursuant to this Part or provided to the Commission or Staff upon written request contains or reflects commercially or financially sensitive information or trade secrets, the RES may file that information with the Commission on a confidential basis. To be filed confidentially, the information shall be accompanied by an affidavit that sets forth both the reasons for the confidentiality and a public synopsis of the information as required by Section 16-115D(e) of the Act. If a report contains information filed on a confidential basis, the RES shall file both a "confidential" and a "public" version of the report and attached documentation, with all confidential information marked "Confidential".

- (5) Section 7(1)(g) of the Freedom of Information Act ("FOIA"), 5 ILCS 140/1 et seq., exempts the following from public disclosure:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

- (6) the information discussed above falls within the exemption identified in Finding (5); and
- (7) the information redacted from Petitioner's filings made to comply with Sections 455.120 and 455.130 of Part 455 should be exempt from public disclosure under Section 7(1)(g) of the FOIA until September 1, 2012.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the information specified in Finding (7) above is afforded proprietary treatment and is exempt from public disclosure and will be accessible only by the Commission and the Commission Staff until September 1, 2012.

IT IS FURTHER ORDERED that the Illinois Commerce Commission retains jurisdiction over Integrys Energy Services, Inc. and of the subject matter hereof for the purpose of issuing such further orders as the Commission may deem necessary.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 22nd day of September, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman